**S.B. Civil Misc. Appeal No.106/2007.**
**(Durga Lal & Anr. Vs. Sanjay Kumar & Anr.)**

Date of Order :: 12th January 2007.

**HON'BLE MR. JUSTICE DINESH MAHESHWARI**

Mr. Ravi Bhansali with
Mr. Dhanesh Saraswat, for the appellants.

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By way of this appeal, the claimants seek enhancement over the amount of compensation awarded by the Tribunal on account of accidental death of their son Amba Lal, about 20 years in age.

In its impugned award dated 28.10.2004 in Claim Case No.639/2003, the Motor Accidents Claims Tribunal, Bhilwara for the purpose quantification of compensation has noticed the submissions of the claimants about the deceased earning Rs.5,000/- per month while working with one M/s. Jain Suitings Bhilwara; and for want of cogent corroborative evidence regarding the working and earning of the deceased, has taken his annual income at Rs. 26,280/- and deducting one-third wherefrom and with application of multiplier of 16, has assessed pecuniary loss at Rs.2,80,320/- and allowing Rs. 20,000/- towards non-pecuniary loss and further Rs.5,000/- towards funeral expenses has awarded compensation in the sum of

Rs.3,05,320/-. The Tribunal has allowed interest @ 6% per annum from the date of filing of the claim application.

Having heard learned counsel for the appellants and having perused the impugned award, this Court is clearly of opinion that the amount allowed by the Tribunal under the impugned award cannot be said to be falling short of just compensation and rather stands on higher side ruling out any scope for enhancement.

It has been strenuously contended on behalf of the appellants that the salary certificate Ex.8 shows the income of the deceased at Rs.5,000/- per month and the same has erroneously been ruled out of consideration by the Tribunal. The submission is not well founded. The claimants have asserted in the claim application that the deceased was working with M/s. Jain Suitings, Bhilwara earning salary of Rs.5,000/- per month but then, Ishwar Patel AW-2 has stated himself to be contractor of warping job with M/s. Jain Suitings and that he was making payment of Rs.5,000/- per month to Amba Lal. It has been noticed that the claimants have never stated the post or job the deceased was engaged in with the said firm; and have not produced the owner or manager or any employee of the said business concern nor have produced any other documentary evidence wherefrom his working with M/s. Jain Suitings at Rs.5,000/- per month could be accepted. Similarly, the witness Ishwar Patel AW-2 has also not produced any supporting

documentary evidence in proof of the fact that he was making payment of Rs.5,000/- per month to the deceased. In view of vague and uncertain evidence on record, the Tribunal cannot be said to have erred in estimating the earning of the deceased at Rs.73/- per day, i.e. about Rs.2,190/- per month, leading to average annual income at Rs. 26,280/-.

Then, taking of entire of two-third of the estimated income of the deceased has only led to higher figure towards loss of contribution for the parents. The deceased being an unmarried person, looking to the future certainties and uncertainties, chances of his getting married and larger part of his income getting diverted to his own family cannot be ruled out. In the circumstances of the case, not more than one-half of the estimated income of the deceased could have been taken towards pecuniary loss for the parents. Further more, though the Tribunal has noticed the age of the parents of the deceased at about 45-50 years, yet has proceeded to apply exceedingly higher multiplier of 16.

With the choice of higher multiplier and adopting of excessive multiplicand, assessment of pecuniary loss itself has been much in excess of the reasonable amount admissible in this case. Non-pecuniary loss and funeral expenses have also been allowed liberally. In the ultimate analysis, the award in question could only be said to be standing on higher side, ruling out any

scope of enhancement. If at all, the Tribunal has erred in favour of the appellants and not against them.

A feeble attempt was made by learned counsel for the appellants to submit that the factor of dependency in the present case ought to have been taken higher in view of the brother of the deceased being of unsound mind. From the perusal of the award, it does not appear if such case was ever placed before the Tribunal and the suggestion of any other dependency on the deceased cannot be accepted in this appeal. In any case, for a reasonable estimate on the loss of dependency for an unmarried vehicular accident victim, ordinarily not more than one-half of his estimated income could be considered. In the present case, the Tribunal has taken loss of dependency at two-third of the estimated income of the deceased and then has applied higher side multiplier of 16.

This Court is clearly of opinion that the award made by the Tribunal in favour of the claimants can only be said to be excessive than that of just compensation and claim for enhancement over such liberal award does not merit acceptance.

The appeal fails and is, therefore, dismissed summarily.

**(DINESH MAHESHWARI), J.**

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